

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**ANNA DANNA,
APPELLANT
vs.**

**MISSOURI DEPARTMENT OF SOCIAL SERVICES, FAMILY SUPPORT DIVISION,
RESPONDENT**

DOCKET NUMBER WD77213

DATE: DECEMBER 2, 2014

Appeal from:

The Circuit Court of Jackson County, Missouri
The Honorable Robert M. Schieber, Judge

Appellate Judges:

Division Two: Joseph M. Ellis, Presiding Judge, Victor C. Howard, Judge and Mark D. Pfeiffer,
Judge

Attorneys:

Bradley A. Constance, for Appellant

Anna E. Connelly, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

ANNA DANNA, APPELLANT

v.

**MISSOURI DEPARTMENT OF SOCIAL SERVICES, FAMILY SUPPORT DIVISION,
RESPONDENT**

WD77213

Jackson County, Missouri

Before Division Two: Joseph M. Ellis, Presiding Judge, Victor C. Howard, Judge and Mark D. Pfeiffer, Judge

Anna Danna (Claimant) appeals from the judgment of the circuit court reversing the denial of nursing home benefits by the Director of the Missouri Department of Social Services, Family Support Division (Division) and ordering the Division to approve her application for benefits as of the date the State of Missouri was named as a primary beneficiary of an annuity policy, which named Claimant and her husband as annuitants. Although the circuit court reversed the Director's decision, Claimant challenges the date when her benefits were to commence. In her sole point on appeal, Claimant contends that the Division erred in rejecting her application for benefits, and the Director erred in affirming the rejection, because the Division acted in an arbitrary, capricious, and unreasonable manner in not giving her prior notice or the opportunity to change the beneficiary of the annuity. The circuit court's judgment is affirmed.

AFFIRMED.

Division Two holds:

Where the evidence presented at the administrative hearing showed that at the time Claimant moved into the nursing home, during the time when her application was pending, and when the Division rejected her application, she was named as an annuitant on an annuity and the State of Missouri was not named as primary beneficiary of the annuity, the annuity was properly counted as an available resource. Because Claimant's available resources after subtraction of the spousal share exceeded the resource maximum, she was ineligible for benefits, and the Director properly affirmed the Division's rejection of her application.

Where Claimant did not raise the argument at the administrative hearing that the Division failed to follow 13 CSR 40-2.010 when the Eligibility Specialist rejected her application without giving her prior notice or the opportunity to change the beneficiary of the annuity, the argument is not preserved for appellate review.

Opinion by: Victor C. Howard, Judge

Date: December 2, 2014

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